

## **REQUEST FOR PROPOSALS**

The City of Evans ("City") is soliciting proposals from qualified firms of Certified Public Accountants interested in completing the City's annual audit. Proposals are due no later than August 27, 2015 by 5:00 p.m. at the office of the Finance Manager, 1100 37<sup>th</sup> Street, Evans, Colorado.

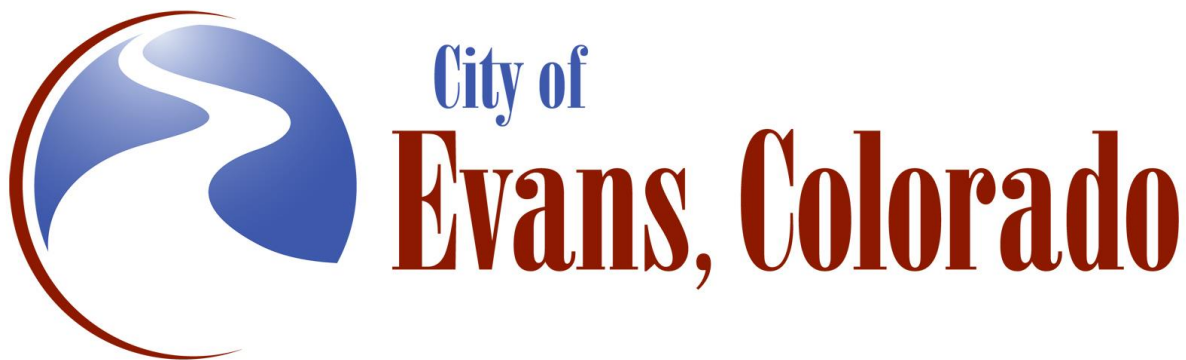
Pre-proposal questions must be submitted to Jacque Troudt, [jtroudt@evanscolorado.gov](mailto:jtroudt@evanscolorado.gov), by August 19, 2015 at 10:00 a.m. Responses will be sent to all interested parties by August 20, 2015 at 5:00 pm.

The firm will be evaluated with the criteria and submission requirements as outlined in the proposal and will be awarded to the responsive and responsible vendor. The purpose of this Request for Proposal ("RFP") is to obtain a highly qualified and capable professional services firm that can successfully complete the annual audit of the City's financial statements for the fiscal years ending December 31, 2015, 2016 and 2017, with the option, on mutual agreement of auditing the City's financial statements for subsequent years.

No proposals shall be withdrawn after receipt of the proposals without the consent of the City of Evans, Colorado, for a period of sixty (60) days after the scheduled time of receiving the proposals.

The City of Evans reserves the right to reject any or all proposals.

Questions pertaining to the proposal may be directed to Jacque Troudt, Finance Manager, 970-475-1127 or [jtroudt@evanscolorado.gov](mailto:jtroudt@evanscolorado.gov)



**Professional Auditing Services  
Request for Proposals**

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## **Section 1.0 - General Information**

### ***1.1 Time and Place for Submissions***

- 1.11 Number:
  - 1.11.1 One copy of each proposal and all associated attachments in a hard copy form, or a digital version of all information as an Adobe PDF document or MS Word document via email.
- 1.12 Date & Time:
  - 1.12.1 Must be submitted no later than 5 p.m. local time on August 27, 2015.
- 1.13 To:
  - 1.13.1 The Finance Manager's office of the City of Evans, located at 1100 37<sup>th</sup> St, Evans, Colorado 80620 or [jtroudt@evanscolorado.gov](mailto:jtroudt@evanscolorado.gov).
- 1.14 For:
  - 1.14.1 The purpose of providing professional auditing services for the City.
- 1.15 Conditions:
  - 1.15.1 Proposals received after 5 p.m. will not be accepted. Consultants accept all risks of late delivery of mailed proposals regardless of fault.

### ***1.2 Definitions***

For the ease of reference, the following definitions shall apply to this Request for Proposal:

City	The City of Evans, Colorado
Contract	The professional services agreement to be entered into for the professional auditing services between the City and the Consultant who submits the proposal accepted by the City.
RFP	Request for Proposal
Consultant	The person or firm submitting the proposal and/or the person or firm awarded the contract.

### ***1.3 Preliminary Schedule***

Request for Proposal Released:	July 30, 2015
Proposal Questions Due:	August 19, 2015 by 10 a.m.
Question Responses Released:	August 20, 2015 by 5 p.m.
RFP's Due:	August 27, 2015 by 5 p.m.
Consultant Presentation:	TBD (if necessary)
Selection:	September 4, 2015
City Council Consideration:	September 15, 2015

## ***1.4 Evaluation Process***

Proposals will be evaluated by a committee of City staff. Evaluation will be based on criteria outlined herein which may be weighted by the City in a manner it deems appropriate. All proposals will be evaluated using the same criteria and weighting. The criteria used will be:

- 1.41 Quality, Accuracy and Completeness of Proposal
  - 1.41.1 The City will consider all the material submitted to determine whether the Consultant's offering is in compliance with the RFP documents, and will rate based on the quality, accuracy and completeness of the proposal.
- 1.42 Capability to Perform Required Services
  - 1.42.1 The City will consider all the materials submitted by each Consultant, and other relevant material it may otherwise obtain, to determine whether the Consultant is capable of and has a history of successfully completing contracts of this type. Specifics of capability are listed in section 3.0 Content of Proposals.
- 1.43 Costs
  - 1.43.1 Associated costs for phased requirements specified within this RFP will be considered in conjunction with the above capabilities and will not be the sole determining factor.
- 1.44 Presentation
  - 1.44.1 Consultants may be asked to attend an on-site interview.

## ***1.5 Proposal Modifications, Clarification, Obligations, and Selection***

The City will **not** reimburse Consultants for any costs involved in the preparation and submission of responses to this RFP or in the preparation for and attendance at subsequent interviews and/or presentations. Furthermore, this RFP does not obligate the City to accept or contract for any expressed or implied services. The City reserves the right to request any Consultant to clarify its proposal or to supply any additional material deemed necessary to assist in the evaluation of the Consultant, and to modify or alter any or all of the requirements herein. In the event of a material modification, Consultants will be given an opportunity to modify their proposal in those specific areas that are affected by the modification.

The City reserves the right to issue any subsequent request or requests for proposals for specific consulting work as it deems necessary to fulfill its requirements, and is under no obligation to conform to awarded firms expectations regarding possible contracted work outside the scope of this RFP.

## ***1.6 Notification of Withdrawal***

Proposals may be modified or withdrawn prior to the date and time specified for proposal submission by an authorized representative of the Consultant, or by formal written notice.

## **1.7 Information**

Proposal questions may be submitted by email to [jtroudt@evanscolorado.gov](mailto:jtroudt@evanscolorado.gov) by August 19, 2015, 10 a.m. The purpose of this is to answer any questions by potential Consultants and the responses will be emailed to all interested parties who register with the Finance Manager prior to the response deadline. Any other questions regarding this RFP should be directed to Jacque Troudt, Finance Manager, City of Evans, Colorado 80620 (970) 475-1127.

## **1.8 No Selection Event**

Final selection of a firm to complete the City's project will follow successful negotiations that satisfy the City's concern that the selection committee's recommendations and the interest of the public are best served. Should no firms be accepted, a second advertisement and request for proposals may be issued.

## **1.9 Additional Work**

All proposers are hereby notified that if mutually agreed upon, the City reserves the right to negotiate additional work. This work will be contracted as a change order.

## **1.10 Performance (Penalties)**

The City reserves the right to provide the Consultant, at any point in the process, with a 30-day notice to perform as contracted or terminate the contract. All other termination adheres to the professional services contract in Section 4.0 Article 5.

## **1.11 Professional Services Contract**

Section 4.0, contains the City of Evans' Professional Services Contract. This document must be signed and submitted by the Consultant to the City after the award for services has been issued by the City and before any work may begin on the awarded project.

# **Section 2.0 – Scope of Work**

## **2.1 Scope of Work to be Performed**

2.1.1 The City of Evans desires the auditor to express an opinion on the fair presentation of its financial statements in conformity with accounting principles generally accepted in the United States.

2.1.2 The financial statement audit shall be performed in accordance with generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants and applicable state and federal regulations. The single

audit of the City of Evans' schedule of expenditures of federal awards is to be performed in accordance with generally accepted auditing standards established by the American Institute of Certified Public Accountants' Auditing Standards Board, the standards set forth in the U.S. General Accounting Office (GAO) "Government Auditing Standards", the provisions of the federal Single Audit Act, and the U.S. Office of Management and Budget (OMB) "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Guidance). The selected firm will also be required to obtain information required for completing the Data Collection Form for Reporting on Audits of States, Local Governments and Non-profit Organizations, including completion of the applicable data elements of the data collection form and signoff.

## ***2.2 Reporting Requirements***

Following the completion of the audit of the fiscal year's financial statements, the auditor shall issue:

2.2.1 A report of examination of the financial statements stating the scope of the examination and that the audit was performed in accordance with generally accepted auditing standards. It must include an opinion as to whether the statements conform to accounting principles generally accepted in the United States.

2.2.2 A letter to management containing comments on compliance, recommendations for improvements, and any other comments deemed pertinent by the auditors and recommendations affecting the financial statements, internal control, accounting, accounting systems, legality of actions, other instances of noncompliance with laws and regulations, and any other material matters. An agreed upon number of copies of the management letter will be provided to the City, in addition to an electronic copy.

2.2.3 A report on internal control over financial reporting and on compliance and other matters, based on an audit of financial statements performed in accordance with government auditing standards. An agreed upon number of copies of the Single Audit report will be provided to the City, in addition to an electronic copy.

2.2.4 A report on compliance with requirements applicable to each major program and internal control over compliance in accordance with the OMB Uniform Guidance. The report on compliance and internal controls shall include all material instances of noncompliance. All nonmaterial instances of noncompliance shall be reported in a separate management letter, which shall be referred to in the report on compliance and internal controls.

2.2.5 Schedule of findings and questioned costs, and summary schedule of prior audit findings and the status of each, if applicable.

## ***2.3 Background***

Known as the "Queen City of the Platte" when incorporated in 1869, Evans was the County Seat of Weld County for many years. From a population of around 400 in a true wild west town, Evans has grown to 18,537 residents living in an urban area with a rural feel. For a long time Evans was the only town in the area to allow liquor and gambling, which made it the center of activity in the area.

Today, Evans is a community where our residents have a wide choice of housing, great schools, all the shopping and amenities of a large town, and a great quality of life. With over 300 days of sunshine each year and a full four seasons, many people relocate to Evans to experience the best of northern Colorado.

Residents enjoy over 300 acres of parks and open space (including a dog park), several hiking and biking trails along the river and within the town, easy access to the Denver International Airport, and quick drives south to Denver or west to the Rocky Mountains. A local airport has flights around the country leaving daily, the access to I-25, US 85 and US 34 are only minutes away, and the conveniently located Union Pacific Railroad offers opportunities for shipping and receiving materials. Evans is a wonderful place to raise a family, start a business, and buy a home.

## ***2.4 City Structure***

2.4.1 The City has all powers of local self-government and home rule and all powers possible for a City to have under the constitution and laws of Colorado. Such powers are exercised in conformity with the provisions of the City of Evans Charter, or in such a manner as may be provided by the Council, not consistent with the Charter.

The corporate authority of the City of Evans, Colorado, is vested in a Mayor and six councilors. The six councilors are nominated and elected by each of the City's three wards. All councilors are elected for a 2 or 4-year term in staggered elections, The Mayor is elected for a term of two years at every biennial election. The City Manager is the Chief Administrative Officer of the City and is responsible to the Council for proper administration of all of the City's affairs.

The City currently maintains 15 funds; 1 General Fund, 7 Special Revenue Funds, 2 Capital Projects Funds, 3 Enterprise Funds, 1 Trust Fund and 1 Agency Fund. The City also has one blended component unit, reported as a major fund in 2014. The City is organized down from the City Manager into 8 different departments; City Manager's Office, Administrative Services including the City Clerk's Office, Human Resources & Risk Management, Economic and Community Development, Recreation, Finance, Police, and Public Works. Within these departments there are a total of 88 full time employee positions.

Among its responsibilities to its citizens the City of Evans provides a water utility, a sewer utility, and a storm water utility. A detailed description of all departments, city budget, departmental goals and objectives can be accessed at: [www.evanscolorado.gov](http://www.evanscolorado.gov).

## **Section 3.0 – Content of Proposals**

(Consultant is to provide written information in the order of section 3)

### ***3.1 Summary of Qualifications***

#### **3.1.1 Independence**

The firm should provide an affirmative statement that it is independent of the City of Evans as defined by applicable standards. In addition, the firm shall give the City written notice of any professional relationships entered into during the period of their engagement.

#### **3.1.2 License to Practice in Colorado**

An affirmative statement should be included that the firm and all assigned key professional staff are properly licensed to practice in Colorado.

#### **3.1.3 Firm Qualifications and Experience**

The firm should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed and the number and the nature of professional staff to be employed on this engagement on a full-time basis and the number and nature of the staff to be so employed on a part-time basis.

The firm is required to submit a copy of the report on its most recent external quality control review, with a statement whether that quality control review included a review of specific government engagements.

The firm shall provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years.

The firm shall provide proof of workers' compensation insurance as well as proof of professional liability (errors & omissions) insurance of at least one million dollars of coverage.

In addition, the firm shall provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with state regulatory bodies or professional organizations.

#### **3.1.4 Partner, Supervisory and Staff Qualifications and Experience**



Identify the principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists, who would be assigned to the engagement.

Audit personnel may be changed at the discretion of the firm, provided that replacements have substantially the same or better qualifications or experience.

#### 3.1.5 Prior Engagements with the City of Evans

List separately all engagements within the last five years with the City of Evans, ranked on the basis of total staff hours and type of engagement (audit, management advisory services, etc). Indicate the scope of work, date, engagement partners, total hours, office location for specific engagement, and the name and telephone number of the principal client contact.

#### 3.1.6 Similar Engagements With Other Government Entities

List all engagements performed in the last five years that are similar to the engagement described in this request for proposal, based on the office that will be directly responsible for this project. These engagements should be ranked on the basis of total staff hours. Indicate the scope of work, date, engagement partners, total hours, and the name and telephone number of the principal client contact.

#### 3.1.7 Specific Audit Approach

The proposal shall include a work plan, including an explanation of the audit methodology to be followed, to perform the services required in Section 2.0 of this request for proposal. In developing the work plan, reference should be made to such sources of information as the City's budget and related materials, organizational charts, manuals and programs, and financial and other management information systems.

### **3.2 Costs**

#### 3.21 Cost Terms

Costs for the standard financial audit should be separate from the cost of the single audit (if needed) and should also include the total all-inclusive maximum price for each engagement for the years 2015, 2016, and 2017.

### ***3.3 Other Information***

The proposal may include other information, such as services or capabilities not identified in this RFP, which would qualify the Consultant or contribute to the City's objectives.

### ***3.4 Exceptions***

If any of the requirements in this section are omitted, explain the reason for the exception.

## **Section 4.0 - Professional Services Agreement**

### **City of Evans, Colorado AGREEMENT FOR PROFESSIONAL SERVICES BY INDEPENDENT CONTRACTOR**

THIS AGREEMENT is made and entered into this \_\_\_\_th day of \_\_\_\_\_, 2015 by and between the City of Evans, State of Colorado (hereinafter referred to as the "City"), and \_\_\_\_\_ (hereinafter referred to as "Consultant").

#### **RECITALS:**

- A. The City requires professional services.
- B. Consultant has held itself out to the City as having the requisite expertise and experience to perform the required services for the Project.

NOW, THEREFORE, it is hereby agreed, for the consideration hereinafter set forth, that Consultant shall provide to the City professional consulting services for the Project.

#### **I. SCOPE OF SERVICES**

Consultant shall furnish all labor and materials to perform the services required for the complete and prompt execution and performance of all duties, obligations and responsibilities for the Project, which are described or reasonably implied from **Section 2.0- Scope of Work**, which is attached hereto and incorporated herein by this reference.

#### **II. THE CITY'S OBLIGATIONS/CONFIDENTIALITY**

The City shall provide Consultant with reports and such other data as may be available to the City and reasonably required by Consultant to perform hereunder. No project information shall be disclosed by Consultant to third parties without prior written consent of the City or pursuant to a lawful court order directing such disclosure. All documents provided by the City to Consultant shall be returned to the City. Consultant is authorized by the City to retain copies of such data and materials at Consultant's expense.

#### **III. OWNERSHIP OF INSTRUMENTS OF SERVICE**

The City acknowledges that the Consultant's documents are an instrument of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the services. Any reuse of the Consultant's documents is at the City's own risk.

#### **IV. COMPENSATION**

- A. In consideration for the completion of the services specified herein by Consultant, the City shall pay Consultant an amount not to exceed \_\_\_\_\_ (\$\_\_\_). Invoices will be itemized

and include hourly breakdown for all personnel and other charges. The maximum fee specified herein shall include all fees and expenses incurred by Consultant in performing all services hereunder.

B. Consultant may submit monthly or periodic statements requesting payment. Such request shall be based upon the amount and value of the services performed by Consultant under this Agreement, except as otherwise supplemented or accompanied by such supporting data as may be required by the City.

1. All invoices, including Consultant's verified payment request, shall be submitted by Consultant to the City no later than the twenty-fourth (24th) day of each month for payment, pursuant to the terms of this Agreement. In the event Consultant fails to submit any invoice on or before the twenty-fourth (24th) day of any given month, Consultant defers its right to payment, pursuant to said late invoice, until the following month.
2. Progress payments may be claimed on a monthly basis for reimbursable costs actually incurred to date as supported by detailed statements, including hourly breakdowns for all personnel and other charges. The amounts of all such monthly payments shall be paid within thirty (30) days after the timely receipt of invoice, as provided by this Agreement.

C. The City has the right to ask for clarification on any Consultant invoice after receipt of the invoice by the City.

D. In the event payment for services rendered has not been made within forty-five (45) days from the timely receipt of the invoice for any uncontested billing, interest will accrue at the rate of twelve percent (12%) per annum compounded annually. In the event payment has not been made within ninety (90) days from the receipt of the invoice for any uncontested billing, Consultant may, after giving seven (7) days' written notice and without penalty or liability of any nature, suspend all authorized services specified herein. In the event payment in full is not received within thirty (30) days of giving the seven (7) days' written notice, Consultant may terminate this Agreement. Upon receipt of payment in full for services rendered, Consultant will continue with all authorized services.

E. Final payment shall be made within sixty (60) calendar days after all data and reports (which are suitable for reproduction and distribution by the City) required by this Agreement have been turned over to and approved by the City and upon receipt by the City of Consultant's written notification that services required herein by Consultant have been fully completed in accordance with this Agreement and all data and reports for the Project.

## **V. COMMENCEMENT AND COMPLETION OF SERVICES**

Within seven (7) days of receipt from the City of a Notice to Proceed, Consultant shall commence services on all its obligations as set forth in the Scope of Services or that portion of such obligations as is specified in said Notice. Except as may be changed in writing by the City, the Project shall be complete and Consultant shall furnish the City the specified deliverables, as provided in **Section 2.0- Scope of Work**.

## **VI. CHANGES IN SCOPE OF SERVICES**

A change in the Scope of Services shall constitute any material change or amendment of services which is different from or additional to the Scope of Services specified in Section I of this Agreement. No such change, including any additional compensation, shall be effective or paid, unless authorized by written amendment executed by the City. If Consultant proceeds without such written authorization, then Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee or representative of the City shall have the authority to enter into any changes or modifications, either directly or implied by a course of action, relating to the terms and scope of this Agreement.

## **VII. PROFESSIONAL RESPONSIBILITY**

A. Consultant hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, as required by law.

B. The services performed by Consultant shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of services in the applicable community.

C. Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by Consultant under this Agreement. Consultant shall, without additional compensation, correct or resolve any errors or deficiencies in his designs, drawings, specifications, reports, and other services, which fall below the standard of professional practice, and reimburse the City for construction costs caused by errors and omissions which fall below the standard of professional practice.

D. Approval by the City of drawings, designs, specifications, reports and incidental services or materials furnished hereunder shall not in any way relieve Consultant of responsibility for technical adequacy of the services. Neither the City's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Consultant shall be and remain liable in accordance with applicable performance of any of the services furnished under this Agreement.

E. The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law.

## **VIII. COMPLIANCE WITH LAW**

The services to be performed by Consultant hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

## **IX. INDEMNIFICATION**

A. INDEMNIFICATION – GENERAL: The City cannot and by this Agreement does not agree to indemnify, hold harmless, exonerate or assume the defense of the Consultant or any other person or entity whatsoever, for any purpose whatsoever. Provided that the claims, demands, suits, actions or proceedings of any kind are not the result of professional negligence, the Consultant shall defend, indemnify and hold harmless the City, its mayor and City council, officials, officers, directors, agents and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including worker's compensation claims, in any way resulting from or arising from the services rendered by Consultant, its employees, agents or subconsultants, or others for whom the Consultant is legally liable, under this Agreement; provided, however, that the Consultant need not indemnify or save harmless the City, its mayor and City council, its officers, agents and employees from damages to the extent caused by the negligence of the City's mayor and City council, officials, officers, directors, agents and employees.

B. INDEMNIFICATION FOR PROFESSIONAL NEGLIGENCE: The Consultant shall indemnify and hold harmless the City, its mayor and City council, and any of its officials, officers, directors, and employees from and against damages, liability, losses, costs and expenses, including reasonable attorneys fees, but only to the extent caused by the negligent or intentional acts, errors or omissions of the Consultant, its employees, subconsultants, or others for whom the Consultant is legally liable, in the performance of professional services under this Agreement. The Consultant is not obligated under this subparagraph IX.B. to indemnify the City for the negligent acts of the City, its mayor or City council, or any of its officials, officers, directors, agents and employees.

C. INDEMNIFICATION – COSTS: Consultant agrees, to the extent provided in Paragraph A., above, to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at the sole expense of Consultant or, at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with any such liability, claims or demands. Consultant also agrees, to the extent provided in Paragraph A. above, to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent. If it is determined by the final judgment of a court of any competent jurisdiction that such injury, loss or damage was caused in whole or in part by the act, omission or other fault of the City, its mayor and City council, officials, officers, directors, agents and employees, the City shall reimburse Consultant for the portion of the judgment attributable to such act, omission or other fault of the City, its mayor and City council, officials, officers, directors, agents and employees.

## **X. INSURANCE**

A. Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by Consultant, pursuant to Section IX, Indemnification, above. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. Consultant shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to Section IX, Indemnification, above, by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

B. Consultant shall procure and maintain, and shall cause any subconsultant of Consultant to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Consultant, pursuant to Section IX, Indemnification, above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Worker's compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of services under this Agreement, and Employer's Liability insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000) each claim, Five Hundred Thousand Dollars (\$500,000) disease - policy limit, and Five Hundred Thousand Dollars (\$500,000) disease - each employee.
2. Commercial general liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products and completed operations. The policy shall contain a severability of interests provision.
3. Professional liability insurance with minimum limits of One Million Dollars (\$1,000,000) each claim and Two Million Dollars (\$2,000,000) annual aggregate, and Consultant shall maintain such coverage for at least three (3) years from the termination of this Agreement.
4. The policy required by Paragraph 2, above shall be endorsed to include the City and the City's officers, employees and consultants as additional insureds. Every policy required above shall be primary insurance, with the exception of Professional Liability and Worker's Compensation, and any insurance carried by the City, its officers, its employees or its consultants shall be excess and not contributory insurance to that provided by Consultant. No additional insured endorsement to the policy required by Paragraph 1, above shall contain any exclusion for bodily injury or property damage arising from completed operations. Consultant shall be solely responsible for any deductible losses under any policy required above.
5. The certificate of insurance provided for the City shall be completed by Consultant's insurance agent as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled or terminated until at least thirty (30) days' prior written notice has been given to the City. The completed certificate of insurance shall be sent to:

City of Evans  
1100 37<sup>th</sup> Street  
Evans, Colorado 80620-2036  
Attn: Risk Manager

6. Failure on the part of Consultant to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of agreement upon which the City may immediately terminate this Agreement or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the City.
7. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
8. The parties hereto understand and agree that the City, its officers and its employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently Three Hundred Fifty Thousand Dollars (\$350,000) per person and Nine Hundred Ninety Thousand Dollars (\$990,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Colo. Rev. Stat. §24-10-101, et seq., as from time to time amended, or otherwise available to the City, its officers or its employees.

#### **XI. NONASSIGNABILITY**

Neither this Agreement nor any of the rights or obligations of the parties hereto shall be assigned by either party without the written consent of the other.

#### **XII. TERMINATION**

This Agreement shall terminate at such time as the services in Section I are completed and the requirements of this Agreement are satisfied, or upon the City's providing Consultant with seven (7) days' advance written notice, whichever occurs first. In the event the Agreement is terminated by the City's issuance of said written notice of intent to terminate, the City shall pay Consultant for all services previously authorized and completed prior to the date of termination. If, however, Consultant has substantially or materially breached the standards and terms of this Agreement, the City shall have any remedy or right of set-off available at law and equity. If the Agreement is terminated for any reason other than cause prior to completion of the Project, any use of documents by the City thereafter shall be at the City's sole risk, unless otherwise consented to by Consultant.

#### **XIII. CONFLICT OF INTEREST**

The Consultant shall disclose any personal or private interest related to property or business within the City. Upon disclosure of any such personal or private interest, the City shall determine if



the interest constitutes a conflict of interest. If the City determines that a conflict of interest exists, the City may treat such conflict of interest as a default and terminate this Agreement.

#### **XIV. VENUE**

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Weld, State of Colorado.

#### **XV. INDEPENDENT CONTRACTOR**

A. Consultant is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Consultant to perform services under the terms of this Agreement shall be, and remain at all times, employees or agents of Consultant for all purposes. Consultant shall make no representation that it is the employee of the City for any purposes.

B. **Disclosure: Consultant is not entitled to workers' compensation benefits, unemployment insurance benefits unless unemployment compensation coverage is provided by the Consultant or some other entity, and Consultant is obligated to pay federal and state income tax on any moneys earned pursuant to this Agreement for Professional Services by Independent Contractor.**

#### **XVI. NO WAIVER**

Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligations of this Agreement.

#### **XVII. ENTIRE AGREEMENT**

This Agreement and the attached Exhibit A is the entire Agreement between Consultant and the City, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified or changed, except as specified herein.

#### **XVIII. NOTICE**

Any notice or communication between Consultant and the City which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States mail, addressed as follows:

The City:           City of Evans  
                          Attn: Aden Hogan, City Manager  
                          1100 37<sup>th</sup> Street

Evans, Colorado 80620-2036

Consultant: \_\_\_\_\_

**XIX. EFFECTIVE DATE AND EXECUTION**

This Agreement shall become effective following execution by both Consultant and City. This Agreement may be executed in counterparts, including by facsimile or electronically, each of which shall be considered an original, but all of which together shall constitute one instrument.

**XX. SPECIAL PROVISIONS**

The "Special Provisions" attached hereto as **Exhibit A** and incorporated by this reference are made a part of this Agreement. For purposes of the Special Provisions, the Consultant shall be referred to as the "Contractor."

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in triplicate, as of the date first written above.

**CITY OF EVANS, COLORADO**

By: \_\_\_\_\_  
John Morris, Mayor [***IF OVER \$100K***]  
Aden Hogan, Jr., City Manager [***IF UNDER***  
***\$100K***] [***Pick one, delete the other***]

ATTEST:

\_\_\_\_\_  
Raegan Robb, City Clerk

APPROVED AS TO FORM AND SUFFICIENCY:

\_\_\_\_\_  
Scotty P. Krob, City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Aden Hogan, Jr., City Manager

**CONSULTANT**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**[Use attest *or* notary block, not both. Delete the one not used, please.]**

ATTEST:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**OR NOTARY BLOCK**

STATE OF COLORADO     )  
  )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
200\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

My commission expires: \_\_\_\_\_.

SEAL

\_\_\_\_\_  
Notary Public

Exhibit A

**Special Provisions Required by §§ 8-17.5-101 et seq., C.R.S.**

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien and that Contractor has participated or attempted to participate in the basic pilot program administered by the U.S. Department of Homeland Security in order to verify that it does not employ any illegal aliens. §

B. Prohibited Acts. Contractor shall not:

1. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

2. Enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. Contractor has verified or attempted to verify through participation in the basic pilot program administered by the U.S. Department of Homeland Security that Contractor does not employ any illegal aliens and, if Contractor is not accepted into the basic pilot program prior to entering into this Agreement, that Contractor shall apply to participate in the basic pilot program every three (3) months until Contractor is accepted or this Agreement has been completed, whichever is earlier.

2. Contractor shall not use basic pilot program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:

i. Notify the subcontractor and the City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph i. hereof, the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.